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Attorneys for Plaintiffs  
NICHOLAS SELBE, DANIEL GHYCZY,  
MAKAELA O'CONNELL, and ANNIYA LOUIS,  
on behalf of themselves and all others similarly situated

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

NICHOLAS SELBE, DANIEL GHYCZY,  
MAKAELA O'CONNELL, and ANNIYA  
LOUIS on behalf of themselves and others  
similarly situated,

Plaintiffs,

v.

PEAK CAMPUS MANAGEMENT, LLC,

Defendant.

Case No. 3:14-cv-3238-MMC

**PLAINTIFFS' NOTICE AND UNOPPOSED  
MOTION FOR FINAL APPROVAL OF  
CLASS AND COLLECTIVE ACTION  
SETTLEMENT**

Date: April 29, 2016  
Time: 9:00 a.m.  
Judge: Hon. Maxine M. Chesney  
Location: Courtroom 7

Complaint filed: July 17, 2014  
Trial date: Not set

1       **PLEASE TAKE NOTICE THAT**, on April 29, 2016 at 9:00 a.m., or as soon thereafter  
 2 as counsel may be heard, Plaintiffs Nicholas Selbe, Daniel Ghyczy, Makaela O'Connell, and  
 3 Anniya Louis, on behalf of themselves and others similarly situated, by and through counsel, will  
 4 move and hereby do move the Court for an Order granting final approval of the Class and  
 5 Collective Action settlement in this matter including:

6           1.       Granting final approval of the parties' proposed Stipulated Settlement Agreement  
 7 of Class Action Claims (the "Settlement"), filed November 20, 2015 (ECF No. 103-1), with  
 8 certain modifications as set forth in the Order Regarding Motion for Preliminary Approval of  
 9 Class and Collective Action Settlement (ECF No. 108) (the "Preliminary Approval Order"), as  
 10 fair and reasonable.

11           2.       Granting final certification of the following Class and Collective Action for  
 12 settlement purposes only pursuant to Federal Rules of Civil Procedure 23 and 29 U.S.C. § 216(b):

13           All persons who have submitted a "Consent to Join Collective Action" in the  
 14 instant Lawsuit prior to June 1, 2015 and all individuals employed in the State of  
 15 California between January 1, 2011 and August 1, 2014 who were employed in  
 16 any of the following "Covered Positions": All Star; Community Advisor;  
 Community Assistant; Leasing All-Star; Work for Rent Leasing AllStar; or any  
 combination thereof (collectively, the "Class Members").

17           3.       Granting final confirmation of the appointment of Plaintiffs' attorneys, Joshua M.  
 18 David of David, Kamp & Frank, L.L.C. and Eric B. Kingsley of Kingsley & Kingsley, APC as  
 19 Class Counsel.

20           4.       Granting final confirmation of the appointment of Nicholas Selbe, Daniel Ghyczy,  
 21 Makaela O'Connell, and Anniya Louis as Class Representatives.

22           5.       Granting final confirmation of Simpluris as the Settlement Administrator.

23       This Motion is supported by the Memorandum of Points and Authorities filed herewith as  
 24 well as the other records, pleadings, and papers filed in this action, and any evidence or argument  
 25 presented at the hearing on this Motion. This Motion is made pursuant to the Preliminary  
 26 Approval Order as well as pursuant to the Court-approved Class Settlement Notices that the  
 27 Settlement Administrator delivered to the Class Members.

28       Plaintiffs and Class Counsel filed a separate Motion for Award of Attorneys' Fees,

1 Litigation Costs, and Enhancement Awards (ECF No. 110), which is noticed for hearing at the  
2 same time at this Motion.

3 A proposed Order is attached hereto as Exhibit 1.

4  
5  
6 Dated: April 8, 2016

KINGSLEY & KINGSLEY

7 /s/ Eric B. Kingsley  
8 ERIC B. KINGSLEY  
9 LIANE KATZENSTEIN LY  
10 Attorneys for Plaintiffs  
11 NICHOLAS SELBE, DANIEL GHYCZY,  
12 MAKaela O'CONNELL, AND ANNIYA  
13 LOUIS

14  
15  
16 Dated: April 8, 2016

DAVID, KAMP & FRANK, L.L.C.

17 /s/ Joshua M. David  
18 JOSHUA M. DAVID  
19 NICHOLAS A. NUNES  
20 Attorneys for Plaintiffs  
21 NICHOLAS SELBE, DANIEL GHYCZY,  
22 MAKaela O'CONNELL, AND ANNIYA  
23 LOUIS

24  
25  
26 I, Joshua M. David, am the ECF User whose identification and password are being used to  
27 file this Notice of Motion and Unopposed Motion for Preliminary Approval of Settlement. In  
28 compliance with Local Rule 5-1(i)(3), I hereby attest that all signatories hereto concurred in and  
authorized this filing.

By: /s/ Joshua M. David

# **Exhibit 1**

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Attorneys for Plaintiffs  
NICHOLAS SELBE, DANIEL GHYCZY,  
MAKAELA O'CONNELL, and ANNIYA LOUIS,  
on behalf of themselves and all others similarly  
situated

*Counsel Continued on Next Page*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NICHOLAS SELBE, DANIEL  
GHYCZY, MAKAELO  
O'CONNELL, and ANNIYA  
LOUIS on behalf of themselves and  
others similarly situated,

Plaintiffs,

v.

PEAK CAMPUS MANAGEMENT,  
LLC,

Defendant.

Case No. 3:14-cv-3238-MMC

**[PROPOSED] ORDER GRANTING:  
(1) MOTION FOR FINAL APPROVAL  
OF CLASS AND COLLECTIVE  
ACTION SETTLEMENT; AND  
(2) PLAINTIFFS' AND CLASS  
COUNSEL'S MOTION FOR AWARD  
OF ATTORNEYS' FEES, LITIGATION  
COSTS, AND ENHANCEMENT  
AWARDS**

*Continued From Previous Page:*

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Attorneys for Defendant  
PEAK CAMPUS MANAGEMENT, LLC

**ORDER**

Plaintiff's unopposed Motion for Final Approval of Class and Collective Action Settlement and Plaintiffs' and Class Counsel's Motion for Award of Attorneys' Fees, Litigation Costs, and Enhancement Awards (the "Motions") came on regularly for hearing on April 29, 2016, at 9:00 a.m., in the United States District Court for the Northern District of California, the Honorable Maxine M. Chesney presiding. All parties were represented by counsel.

Having considered the memoranda and declarations, oral arguments of counsel, and the relevant statutory and case law, the Court GRANTS Plaintiff's and Class Counsels' Motions and orders and finds as follows:

1. The Court FINDS that no member of the Rule 23 class or the FLSA collective action has objected to the settlement.

2. The Court FINDS that the settlement is fair and reasonable, and, therefore, the Motion for Final Approval of Class and Collective Action Settlement is GRANTED.

2. The Parties' proposed Stipulated Settlement Agreement of Class Action Claims (the "Settlement"), which the Court preliminarily approved with certain modifications as set forth in the Order Regarding Motion for Preliminary Approval of Class and Collective Action Settlement (ECF No. 108), is APPROVED as so modified.

3. The following Class and Collective Action is finally certified for settlement purposes only pursuant to Federal Rules of Civil Procedure 23 and 29 U.S.C. § 216(b):

All persons who have submitted a "Consent to Join Collective Action" in the instant Lawsuit prior to June 1, 2015 ("Opt-In Class Members") and all individuals employed in the State of California between January 1, 2011 and August 1, 2014 who were employed in any of the following "Covered Positions": All Star; Community Advisor;

Community Assistant; Leasing All-Star; Work for Rent Leasing All-Star; or any combination thereof (“California Class Members”) (collectively, “Class Members”).

4. The appointment of Plaintiffs’ attorneys, Joshua M. David of David, Kamp & Frank, L.L.C. and Eric B. Kingsley of Kingsley & Kingsley, APC as Class Counsel is confirmed.

5. The appointment of Nicholas Selbe, Daniel Ghyczy, Makaela O’Connell, and Anniya Louis as Class Representatives is confirmed.

6. The appointment of Simpluris as the Settlement Administrator is confirmed.

7. Under Federal Rules of Civil Procedure 23(h) and 54(d) and Section 216 of the FLSA, 29 U.S.C. § 216(b), Plaintiffs and Class Counsel have moved for an award of attorneys’ fees, enhancement awards, and litigation costs.

8. This class action and collective action settlement resolves a wage-and-hour dispute on a class-wide basis.

9. The Court’s December 30, 2015 Order granted preliminary approval of the Settlement, pursuant to which Plaintiffs and Class Counsel requested payment from the Settlement Amount of attorneys’ fees of thirty percent (30%) of the Settlement Amount, equating to \$240,000.00, litigation costs of \$24,473.43, and enhancement awards for the Class Representatives totaling \$24,000.00 to be allocated \$8,000.00, \$8,000.00, \$4,000.00, and \$4,000.00, respectively.

10. Rule 23(h) provides that, “[i]n a certified class action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by . . . the parties’ agreement.” The Rule further provides that “[a] claim for an award must be made by motion under Rule 54(d)(2),” notice of which must be “directed to class members in a reasonable manner” and that the Court “must find the facts and state its legal conclusions under Rule 52(a).” Fed. R. Civ. P. 23(h)(1) & (3). In turn,



1  
2 Rule 54(d)(2) requires a claim for fees to be made by motion, and specifies its timing  
3 and content, including, in relevant part, “the grounds entitling the movant to the  
4 award” and “the amount sought.” Fed. R. Civ. P. 54(d)(2)(B).

5 11. All Class Members were advised of Class Counsel’s request for an award  
6 of fees and costs in the Court-approved Class Settlement Notices. As directed by the  
7 Court, on February 9, 2016, Plaintiffs and Class Counsel filed a separate Motion for  
8 Award of Attorneys’ Fees, Litigation Costs, and Enhancement Awards (ECF No.  
9 110). In the Class Settlement Notices, all Class Members were advised how to obtain  
10 a copy of the Motion either from PACER or the Settlement Administrator’s website  
11 where the Motion is readily available.

12 12. When “the settlement produces a common fund for the benefit of the  
13 entire class, courts have discretion to employ either the lodestar method or the  
14 percentage-of-recovery method” of calculating attorneys’ fees awards. *In Re Bluetooth*  
15 *Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011).

16 13. Under the percentage-of-the-fund method, it is appropriate to base the  
17 percentage calculation on the gross settlement amount. *See generally Boeing v.*  
18 *Gemert*, 444 U.S. 472, 479 (1980); *Williams v. MGM-Pathe Commc’ns Co.*, 129 F.3d  
19 1026, 1027 (9th Cir. 1997).

20 14. The Court adopts the percentage-of-the-fund approach here and finds that  
21 the attorneys’ fees and litigation costs requested are reasonable. The fee award of  
22 thirty percent (30%) of the fund is within the range of reasonable percentage fee  
23 awards in this Circuit. *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d  
24 1301, 1311 (9th Cir. 1990) (stating that the Ninth Circuit has historically considered  
25 twenty-five percent of the common fund a “benchmark” figure for attorneys’ fee  
26 awards); *Knight v. Red Door Salons, Inc.*, 2009 U.S. Dist. LEXIS 11149, at \*17, 2009  
27 WL 248367 (N.D. Cal. 2009) (stating the exact percentage varies depending on the  
28 facts of the case, and in “most common fund cases, the award exceeds that

1  
2 benchmark.”); *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 272 (9th Cir.  
3 1989) (“Ordinarily, however, such fee awards range from 20 percent to 30 percent of  
4 the fund created.”).

5 15. A *Lodestar* cross-check reveals that the attorneys’ fees requested, 30% of  
6 the common fund amount, equating to \$240,000.00 is substantially less than the  
7 *Lodestar* amount of \$449,195.00. The Court finds that Class Counsel’s hours and  
8 hourly rates are reasonable, thus, the requested fee award results in a “negative  
9 multiplier” and the *Lodestar* cross-check supports a finding that the requested  
10 percentage of the fund, 30%, is both fair and reasonable.

11 16. Litigation costs are routinely awarded in addition to attorneys’ fees. *See*  
12 *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *Odrick v. UnionBanCal Corp.*,  
13 2012 U.S. Dist. LEXIS 171413, at \*17, 2012 WL 6019495 (N.D. Cal. Dec. 3, 2012);  
14 *Knight v. Red Door Salons, Inc.*, 2009 U.S. Dist. LEXIS 11149, at \*20 (N.D. Cal. Feb.  
15 2, 2009). Class Counsel have advanced all costs incurred in this case and request  
16 reimbursement from the common settlement fund in the total amount of \$24,473.43,  
17 including \$23,223.43 in costs incurred and \$1,250 in anticipated costs. Class Counsel  
18 has provided a detailed itemization of these costs, and the Court FINDS that these  
19 costs are reasonable.

20 17. The Court has the discretion to award enhancement awards, or incentive  
21 fees, to named class representatives in a class action suit. *Van Vranken v. Atl.*  
22 *Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995). The Court FINDS that  
23 enhancement awards to the Class Representatives in this case are justified.

24 18. Accordingly, Plaintiffs’ and Class Counsel’s Motion for Award of  
25 Attorneys’ Fees, Litigation Costs, and Enhancement Awards is GRANTED. Class  
26 Counsel is awarded a fee of thirty percent (30%) of the Settlement Amount, equating  
27 to \$240,000.00, and litigation costs of \$24,473.43. The Class Representatives are  
28 awarded total Enhancement Awards of \$24,000.00, to be allocated \$8,000.00 each to

Nicholas Selbe and Daniel Ghyczy and \$4,000.00 each to Makaela O'Connell and Anniya Louis.

19. The Settlement Administrator shall distribute the Settlement Amount to the Class Members, Class Counsel, the Class Representatives, and the LWDA as specified in the Settlement Agreement and this Order.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2016

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MAXINE M. CHESNEY  
United States District Judge